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November 1, 2004

Mary L. Cottrell, Secretary
Department of Telecommunication and Energy
One South Station, 2nd Floor
Boston, MA 02202

Re: D.T.E. 04-68 - Petition of Boston Edison Company d/b/a NSTAR Electric for Approvals Relating to the Assignment of Power Purchase Agreements with Ocean State Power and Ocean State Power II

Dear Secretary Cottrell:

Enclosed for filing is the Reply Brief of Boston Edison Company d/b/a NSTAR Electric in the above-referenced proceeding. Also enclosed is a certificate of service.

Thank you for your attention to this matter.

Very truly yours,

Robert N. Werlin

Enclosures

cc: Joan Foster Evans, Hearing Officer
Service List

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Boston Edison Company	)	D.T.E. 04-68

CERTIFICATE OF SERVICE

I certify that I have this day served the foregoing document upon the Department of Telecommunications and parties of record in accordance with the requirements of 220 C.M.R. 1.05 (Department's Rules of Practice and Procedures).

Robert N. Werlin, Esq.
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Dated: November 1, 2004

COMMONWEALTH OF MASSACHUSETTS

DEPARTMENT OF TELECOMMUNICATIONS AND ENERGY

Petition of Boston Edison Company For Approvals Relating to the Assignment of Purchase Power Agreements with Ocean State Power and Ocean State Power II	)	D.T.E. 04-68

REPLY BRIEF OF BOSTON EDISON COMPANY

D/B/A NSTAR ELECTRIC

Submitted by:

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Boston, Massachusetts 02110

Dated: November 1, 2004

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REPLY BRIEF OF BOSTON EDISON COMPANY D/B/A NSTAR ELECTRIC

I. INTRODUCTION

Boston Edison Company d/b/a NSTAR Electric ("Boston Edison" or the "Company") files this reply brief to respond to the initial brief of the Attorney General of the Commonwealth (the "Attorney General") in the above-referenced proceeding before the Department of Telecommunications and Energy (the "Department").[1] This case was filed by the Company, pursuant to G.L. c. 164, §§ 1A, 1G, 76, 94 and 94A, for approval of: (a) the Purchase and Sale Agreement between Boston Edison and TransCanada Energy Ltd. ("TransCanada") to effect the assignment of Boston Edison's current purchase-power contracts with Ocean State Power ("OSP 1") and Ocean State Power II ("OSP 2") (collectively, the "OSP PPAs"), which are Rhode Island partnerships (the "TransCanada Purchase and Sale Agreement"); and (b) approval of ratemaking treatment relating to the TransCanada Purchase and Sale Agreement.

Although the Attorney General asks the Department to reject the Company's petition for approval of the TransCanada Purchase and Sale Agreement and associated

[1] In responding to the Attorney General's initial brief, the Company will not repeat arguments at length that were addressed in the Company's Initial Brief. Silence on any matter raised by the Attorney General does not indicate the Company's agreement to any issue raised by the Attorney General. The Company expressly reasserts the positions and arguments set forth in its Initial Brief.

ratemaking treatment, he does not dispute any of the evidence, analytical methods or legal standards presented by the Company. Instead, he argues that it is "speculative" to conclude that the Company satisfied the maximum mitigation requirement of the Electric Restructuring Act, Chapter 164 of the Acts of 1997 (the "Act") because the Company did not "assign the correct value" to the existing OSP PPAs and did not receive multiple bids solely for the OSP contracts. To the contrary, the record establishes that the Company properly valued the future expense attributable to the OSP PPAs, and establishes that entering into the TransCanada Purchase and Sale Agreement will maximize mitigation and result in projected customer savings of approximately $13 million on a net-present-value ("NPV") basis. Accordingly, the Department should reject the Attorney General's arguments and approve the Company's petition so that the significant customer benefits can be achieved.

II. THE TRANSCANADA PURCHASE AND SALE AGREEMENT MAXIMIZES MITIGATION OF TRANSITION COSTS.

A. Introduction

The Attorney General correctly recognizes that, in considering approval of a proposed buyout of a PPA, the Department applies a standard of reasonableness. Cambridge Electric Light Company/Commonwealth Electric Company, D.T.E. 04-60, at 6 (2004) ("Pittsfield") citing Canal Electric Company/Cambridge Electric Light Company, D.T.E. 01-94, at 7 (2002) and other cases cited in Boston Edison's Initial Brief (Boston Edison Initial Brief at 4-5).

In determining whether a buyout of an obligation to purchase electricity is reasonable, the Department considers "whether the company used a 'competitive auction or sale' that ensured 'complete, uninhibited, non-discriminatory access to all data and

information by any and all interested parties seeking to participate in such auction or sale.'" Pittsfield at 21. "[*T*]*he Department relies on the results of the auction to determine maximum mitigation*." Id. at 24 (emphasis added). An open, transparent, and fairly managed auction tests the market for, and the value of, an asset at the time of the offering. Id. citing D.T.E. 98-78/83 at 10:

> The bid results of such a market test under proven fair conditions are strong evidence of an asset's worth (citation omitted). Further, the Department has held that, under the Act, the bargained-for terms of a transaction achieved through "an open market-test is a better determinant of asset value than an administrative determination" and that "[o]nly upon the most compelling showing would the Department supplant the results of a market test." Boston Edison Company/Cambridge Electric Light Company, D.T.E. 98-119/126, at 29 (1999). *When an auction process is used to divest of contractual entitlements, the marketplace has a chance to value the contracts and any above-market component should be treated in the same manner as other divestiture costs*.

Pittsfield at 24 (emphasis added). Notably, the Attorney General's Initial Brief fails to cite the Department's long-standing precedent, reiterated in Pittsfield, that an open, transparent and fairly managed auction constitutes a strong foundation for a finding of reasonableness. Moreover, the Attorney General fails to acknowledge that the same auction at issue in this case was already approved by the Department in Pittsfield:

> The Department has made its determination that the auction process provided complete, uninhibited, non-discriminatory access to all data and information by all interested bidders and that the auction process was competitive, and, therefore, structured to maximize the value of the PPAs.

Pittsfield at 25. Notwithstanding the Department's findings in Pittsfield, the Attorney General argues that the Department should reject the TransCanada Purchase and Sale Agreement because the Company failed to establish that, by entering into the proposed agreement, the Company met the maximum mitigation requirement of the Act (Attorney General Initial Brief at 6). Based on the evidence presented, the Company has

demonstrated that it has met the standards established in the Act and that the Attorney General's arguments, as described more fully below, are without merit.

B. The Company and CEA Reasonably and Fairly Determined the Value of the OSP PPAs.

The Attorney General contends that the Company and Concentric Energy Advisors, Inc. ("CEA")[2] did not adequately evaluate the value of the existing OSP PPAs (Attorney General Initial Brief at 6-7). He suggests that there were three components of the existing OSP PPAs that CEA did not assign a financial value: (1) an option to purchase the pro-rata portion of the plant at the end of the contract; (2) title to the Site Restoration Fund and OSP's obligations to restore the site; and (3) a right to any net gain, or the obligation to pay any net loss, from OSP's sale or transfer of the site to a third party. The Attorney General argues that CEA did not analyze whether the OSP units would be economic to operate in today's marketplace or the financial value of the OSP generating units. According to the Attorney General, by failing to conduct this analysis, CEA did not assign a proper value to the existing OSP PPAs, thereby failing to demonstrate that the TransCanada Purchase and Sale Agreement mitigates transition costs to the maximum extent possible (id. at 7). As set forth below, the record evidence demonstrates that the Company reasonably and fairly evaluated the financial value of the existing OSP PPAs, including the elements identified by the Attorney General. The Attorney General's arguments are without merit and should be rejected by the Department.

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[2] NSTAR Electric retained CEA to assist in the development, design and evaluation of the bids received from the 2003 Auction (see generally Exh. NSTAR-RBH).

1. Option To Purchase Pro-Rata Share of the OSP Plant

The Attorney General maintains that CEA and the Company failed to assign a financial value to the option to purchase a pro-rata portion of the plant at the end of the contract (Attorney General Initial Brief at 6). Contrary to this unsupported assertion, the record evidence demonstrates that CEA and the Company analyzed the value of the Company's option to purchase a pro-rata portion of the OSP plant at the end of the term of the PPA, and determined that such an option did not provide any additional value to the existing OSP PPAs (Tr. 1, at 43). Without being exercised, the option itself is without value, and Mr. Hevert testified that there is no reasonable basis to conclude that such an option would ever be exercised (id.). Moreover, there is no evidence in this proceeding to suggest that the value would be anything other than zero.

The Attorney General's reference to the Third Amendment to the OSP PPA with Boston Edison is instructive in understanding that the Company's conclusion is both reasonable and fair. The right to purchase exists only if OSP "determines not to operate Unit 1" upon the expiration of the PPA (Exh. NSTAR-BEC-GOL-1, Third Amendment, at 3-4).[3] If, at the expiration of the PPAs, the owner(s) of OSP decided not to operate the plant, it would be based on the determination that the plant was no longer economic.[4] However, if it turned out that the plant had continued value at that time, a rational owner

[3] For ease of reference, the Company has reproduced the cited pages from Exhibit NSTAR-BEC-GOL-1, and appended them to this Reply Brief. It should be noted that the provision was subsequently amended in ways that are not material to this issue. Any residual right to purchase the plant at the expiration of the PPAs is contingent on the owner of OSP electing to cease operations and the requirement that NSTAR Electric assume all obligations relating to the facility.

[4] In fact, as described in Section III.B.4, infra, the projections of costs and market prices for electricity prepared by CEA establish that the operation of the facility is not likely to be economic in the future.

would not discontinue operations and permit others to purchase it for a price that would be below its market value. If, as is much more likely, the plant is not economic and the owner ceases operation at the expiration of the PPAs, there would be no advantage for NSTAR Electric (or its customers) to pay anything for a valueless asset. The "right to purchase" a unit without commercial value, only after OSP first determines not to operate, is by definition, without commercial value.

Accordingly, the Attorney General's argument that NSTAR Electric would receive a windfall in the future by invoking its "right" to purchase the facility is both speculative and inconsistent with the contractual rights of the owner(s) of OSP and the Company. NSTAR Electric and CEA properly accorded no value to the right to purchase the plant in the future, and the Attorney General's argument to the contrary has no merit.

2. The Site Restoration Fund

The Sixth Amendment to the OSP PPA with Boston Edison established the terms of the Site Restoration Fund to pay for the restoration of the OSP site (Exh. NSTAR-BEC-GOL-1, Sixth Amendment at 3-6, appended hereto). Site restoration is defined by the OSP PPA to mean the following:

> the return of the Site to as close as is practicable to its condition prior to the construction of either unit, including, without limitation, removing all buildings, improvements and other structures, both above and below the ground, placed thereon by Seller and including doing all acts and things necessary to comply with all federal, state and local environmental laws, ordinances and requirements and to obtain all permits, certificates or other applicable evidence that the Site is free from pollution or contamination by toxic or hazardous wastes.

Id. See also Tr. 1, at 54. The Attorney General asserts that the Company and CEA did not adequately evaluate the value of the Site Restoration Fund (which the Attorney General calculates to be more than $26 million at the end of the contract term) in

determining the value of the OSP PPAs (Attorney General Initial Brief at 6).[5] The Attorney General's assertion of unrecognized value is refuted by his description of the fund's assets as coincident with "the Seller's obligation to restore the site" (Attorney General Initial Brief at 6). Mr. Hevert testified that the Site Restoration Fund is designed to equal the restoration costs associated with the site at the termination of the agreement (Tr. 1, at 45-49). Pursuant to the provisions governing the Site Restoration Fund, an environmental expert periodically recalculates the expected cost of restoring the site, and adjusts for expected inflation and reinvestment rates (Exh. AG-2-8).[6] Therefore, the amounts contributed to the fund are dedicated to site restoration and periodically adjusted to match the expected costs of site restoration.

Accordingly, at the end of the terms of the PPAs, the amounts in the fund will be used to restore the site and there is no expectation that any money would be returned to the Company. CEA and the Company properly evaluated the value of the Site Restoration Fund and properly determined that it did not provide any additional value to

---

[5] The Attorney General misstates Mr. Hevert's testimony in arguing that CEA considered only the expenses associated with the fund (Attorney General Initial Brief at 7, n.4). In misstating the testimony, the Attorney General conveniently fails to address the remainder of Mr. Hevert's statement:

> …there would be no additional cost or benefit associated with the plan, because at the end the amount of funds in the site restoration fund will equal the cost of restoring the site, and therefore there is no gain or benefit associated with it.
>
> And that has been our assumption. We've no reason to believe that the balance of the site restoration fund, especially given the six-year true-up that occurs, would be anything other than zero.

Tr. 1, at 56-57.

[6] The most recent expert report established a required monthly payment of $176,566 into the fund for the required restoration funds to be available for OSP Units 1 and 2 (id. at Attachment AG-2-8(C)). The $29 million dollars to be collected from the monthly payments of $176,556, when added to the estimated interest to be earned and the amount already in the fund, was projected to total over $63 million, or the cost to restore the site as required under the PPAs (id.).

the existing OSP PPAs (Tr. 1, at 57). There is no evidence to support a different conclusion.

3. Gain or Loss From Sale of OSP Plant

The Sixth Amendment to the OSP PPA with Boston Edison added a new provision to the PPA, which states:

> If upon termination of this Agreement, (a) Seller ceases to operate Unit 1, (b) neither Buyer nor any other Purchaser, individually or collectively, elects to purchase Unit 1 pursuant to the terms of Section 5.6 of this Agreement in the case of Buyer or a substantially similar provision of a Unit Power Agreement in the case of any other Purchaser, (c) Seller sells or otherwise transfers ownership of the Site to another entity or person and (d) Seller realizes a Net Gain (as hereinafter defined) from such sale or transfer, Seller shall pay to Buyer, within sixty days following the date of such sale or transfer, an amount equal to the product of Buyer's Share and the Net Gain. If upon the termination of this Agreement, the conditions set forth in clauses (a), (b) and (c) of the preceding sentence are satisfied and Seller realizes a Net Loss (as hereinafter defined) from the sale or transfer of ownership of the Site to another person or entity, Buyer shall pay to Seller, within sixty days following the date of such sale, an amount equal to the product of Buyer's Share and the Net Loss.

(Exhibit NSTAR-BEC-GOL-1, Sixth Amendment at 2-3 (appended hereto)). From this provision, the Attorney General argues that CEA and the Company did not adequately determine the alleged "value" of this provision (Attorney General Initial Brief at 6). The Attorney General effectively responds to his own argument when he clarifies that the provision establishes both "the right to any net gain, *or the obligation to pay any net loss*, from OSP's sale or transfer of the site to a third party" (id.). Indeed, Mr. Hevert testified that this provision provided no additional value to the contract because it presented so many unknown and unpredictable contingencies (Tr. 1, at 60).

Four different contingencies would have to occur before a net gain could occur: (1) OSP ceases to operate the unit; (2) neither Boston Edison or any other party who has entered into a unit power agreement with OSP elects to purchase the unit; (3) OSP sells

the unit; and (4) OSP realizes a net gain. As with the purchase right describe in Section III.B.1, supra, this clause would be operable only if the owner(s) of OSP were to decide to cease operation of the plant. If the unit were commercially viable and therefore could be sold at a net gain, OSP would likely continue operations. It is inconceivable that OSP would sell an economic facility to a third party in order to hand the gain to NSTAR Electric.

Given these multiple unpredictable contingencies, CEA and the Company reasonably concluded that no additional value could be accorded the theoretical sale of the unit under the contract provisions cited by the Attorney General. The Attorney General has pointed to no evidence in this proceeding that would lead to a different conclusion. Indeed, it is far more certain that customers will achieve significant savings from the TransCanada Purchase and Sale Agreement. Accordingly, the Attorney General's argument that CEA and the Company did not adequately determine the value of this provision should be rejected by the Department.

4. Economic Value of Continuing To Operate OSP Plant

The Attorney General charges that CEA did not analyze: (1) whether the OSP units would be economic to operate in today's marketplace; or (2) the financial value of the units (Attorney General Initial Brief at 7). According to the Attorney General, such information would affect the value of the existing OSP PPAs (id.). The Attorney General's argument is totally off-base.

Although the Company has contract rights to the electricity from the OSP PPAs, the Company does not hold any ownership interest in the units themselves. Consequently, a financial valuation of the units' equity value would be meaningful only if there were an economically viable scenario under which the Company would acquire

them. As described above, the contract clauses cited by the Attorney General in support of the proposition that there could be such a "pot of gold" waiting at end of the PPAs are contradicted by the record. The evidence presented in this case demonstrates that the OSP units are not competitive in the current market, and that the nature of the contractual provisions limit the likelihood that the Company could acquire them under the unlikely scenario they would be competitive in a future market. The OSP PPAs are different from many of the other PPAs in that the OSP PPAs are cost-of-service contracts regulated by the Federal Energy Regulatory Commission. That means that the prices paid by the Company reflect the costs actually incurred to operate the plant. When the future costs of the plant are compared to the projected market prices of electricity, the evidence establishes that the cost to produce the output to the Company is nearly $129 million higher than the market value of the electricity produced on an NPV basis (RR-DTE-4, Att. AG-1-14).[7] Accordingly, the record establishes that the OSP facility is not economic to operate in the future and is unlikely to have a positive economic value (even if the Company had viable post-contract rights to the facility, which it does not).

Accordingly, the Attorney General's arguments concerning the value of the OSP units should be rejected by the Department.

C. The Company and CEA Reasonably and Fairly Evaluated the Bids Received for the Existing OSP PPAs.

The Attorney General contends that the Department should reject the TransCanada Purchase and Sale Agreement because it is not possible to know whether

[7] In nominal values, the cost to produce the electricity under the two PPAs is projected to be approximately $271 million and the market value of that output is projected to be only $103 million (id., page 1 of 6, compare the sum of lines 3 and 10 with the sum of lines 2 and 9).

the TransCanada bid provided the greatest level of mitigation of the above-market costs associated with the OSP contracts (Attorney General Initial Brief at 8). According to the Attorney General, it is "speculative" to conclude that TransCanada's bid provided the greatest level of mitigation because no other final bidder bid for the OSP contracts (id.). The Attorney General's objection again lack merit because the record demonstrates that the auction process was highly competitive. In fact, there was significant interest and participation in the auction, which resulted in the receipt of 12 different bids, including two bids for the entire PPA portfolio (including the OSP PPAs) and one bid for all but one of the PPAs (Exh. NSTAR-RBH at 17). It is important to note that the highly structured and confidential nature of the auction process required each bidder to submit a bid without the benefit of knowing either the number of others who intended to submit qualified bids, or the dollar amount of each competitor's bid (see Tr. 1, at 32-33).[8] There is no suggestion that the final bidder for the OSP PPAs was aware about the content of other bids or how many other final bidders were actively competing for the OSP PPAs. As described by Mr. Hevert, strict confidentiality was maintained and the use of this process resulted in a fully competitive auction that maximized the level of mitigation of the above-market costs associated with the OSP PPAs.

Once bids were received, CEA and the Company engaged in further discussions with bidders in an effort to identify the combination of bids that was most likely to create

[8] It is standard procedure for a competitive bidding process to narrow the number of bidders with whom the seller conducts intensive negotiations. See, e.g., Boston Edison Company, D.T.E. 98-119, at 14 (1999) (final negotiations limited to two bidders for Pilgrim nuclear plant); Boston Edison Company, D.T.E. 97-113, at 9 (1998) (final negotiations limited to two bidders for fossil plants).

the greatest possible reduction in above-market costs associated with the PPA portfolio. The competitive process permitted the Company to negotiate the most advantageous transaction for the OSP PPAs and maximize the mitigation for the contracts. That process has resulted in approximately $13 million of projected NPV customer savings. The Attorney General's argument for rejection of the TransCanada Purchase and Sale Agreement seems to be based on the unsupported assumption that a "better deal" must exist. The competitive auction process has ensured that the Company has achieved the greatest cost savings possible for customers, and rejection of the petition by the Department would only withhold this maximum level of savings from customers. The Attorney General's argument is without merit.

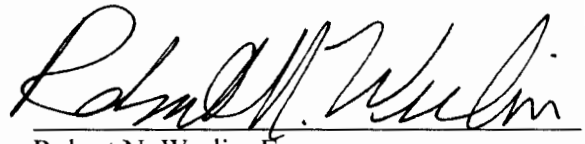
III. CONCLUSION

The Attorney General would have the Department deny the Company's petition for approval of the TransCanada Purchase and Sale Agreement and associated ratemaking treatment, depriving Boston Edison's customers of the maximum mitigation of the existing OSP PPAs. His criticisms have no basis in fact or law and should be rejected by the Department. For the reasons set forth herein and in the Company's Initial Brief, the Department should approve the Company's Petition.

Respectfully submitted,

BOSTON EDISON COMPANY

By Its Attorneys,



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Date: November 1, 2004

APPENDIX TO REPLY BRIEF

Excerpts from Exhibit NSTAR-BEC-GOL-1

> return on equity capital which is equal to the Commission's then effective generic rate of return on common equity, and shall be determined without regard to the provisions of Sections 7.6 and 7.7 hereof, and provided, further, that Buyer may elect to terminate this Agreement by payment to Seller of the Termination Sum, determined as of the date of the Operating Committee's written notice instructing Seller not to make the Major Repair, less the amount included as an allowance for depreciation in any capacity charge paid by Buyer after the date of such notice. This Agreement shall terminate upon the date of Buyer's payment to Seller of the Termination Sum as thus adjusted."

IV. Article 5.5 of the Unit Power Agreement is amended by deleting the word "Purchasers" to be found at the end of the first sentence of said Article 5.5 and inserting the word "Purchasers" in place thereof, so that said sentence shall state "... the total of all Purchasers' Entitlements to the Capacity and Corresponding Energy of Unit 1."

V. Article 5.6 of the Unit Power Agreement is amended by deleting the second sentence of said Article and substituting the following two sentences therefor:

> "If Seller determines not to operate Unit 1 upon the expiration of this Agreement, (based on Seller's determination that Unit 1 is not commercially operable, or that a sufficient number of purchasers have not elected to continue to purchase their Entitlements, or for any other reason), Buyer, either individually or together with other Purchasers, shall have the right to purchase Unit 1 for an amount equal to the product of ER (as defined in Section 7.3 below) and the Net Investment Base of Unit 1 at the expiration of this Agreement; provided, however, that

Buyer individually or with such other Purchasers, assumes all of Seller's obligations in connection with Unit 1, including but not limited to Seller's obligations under any Financing Agreement, the Unit Power Agreements, the lease agreement for the Site, the water supply agreement for Unit 1, and the fuel supply and transportation agreements for Unit 1. In the event that Seller has made a Major Repair to Unit 1 and Seller determines not to continue operation of Unit 1 at the end of the term of this Agreement and no other person (including Buyer and other Purchasers) acquires Unit 1 from Seller within a period of ninety (90) days following the end of the term of this Agreement, Buyer shall, within thirty (30) days of the end of such period, pay an amount equal to the product of Buyer's Share and the undepreciated portion of the investment in plant incurred in making such Major Repair."

VI. Article 7.2 of the Unit Power Agreement is amended by adding the words "Buyer's Share of" following the words "Appendix F," to be found at the end of said Article 7.2, so that said Article 7.2 shall state ". . . as adjusted in accordance with Articles 7.6 and 7.7. below and Appendix F, and Buyer's Share of the Monthly Energy Charge. . . ."

VII. Article 7.8 of the Unit Power Agreement is deleted and the following is substituted therefor:

"Monthly Energy Charge. Buyer's Share of the Monthly Energy Charge shall be equal in amount to the product of Buyer's Share and the monthly variable charges under Seller's fuel supply and transportation agreements. These variable charges shall be costs actually experienced by Seller in the month."

and owing to the Site restoration fund in accordance with Appendix B hereto); and . . . ."

II. Article 5.6 shall be amended by inserting a new sentence at the end of the second sentence which shall read as follows: "Upon the purchase of Unit 1 by Buyer, either individually or together with other Purchasers, pursuant to this Section 5.6, Buyer and such other Purchasers shall assume from Seller title to the Site restoration fund established in accordance with Appendix B and shall also assume Seller's obligations to restore the Site."

III. Article 7.3(b)(1) is amended by deleting the phrase "(including the net gain or loss, if any from the sale of land) and cost of removal and Site restoration in accordance with Appendix B" after the words "salvage value" and by substituting the following therefor: "and cost of removal and, in accordance with Appendix B, cost of Site restoration", so that Article 7.3(b)(1) now reads ". . . including salvage value and cost of removal and, in accordance with Appendix B, cost of Site restoration . . . ."

IV. The following is added at Article 7.12:

> 7.12 Sale of Land. If upon termination of this Agreement, (a) Seller ceases to operate Unit 1, (b) neither Buyer nor any other Purchaser, individually or collectively, elects to purchase Unit 1 pursuant to the terms of Section 5.6 of this Agreement in the case of Buyer or a substantially similar provision of a Unit Power Agreement in the case of any other Purchaser, (c) Seller sells or otherwise transfers ownership of the Site to another entity or person and (d) Seller realizes a Net Gain (as hereinafter defined) from such sale or

transfer, Seller shall pay to Buyer, within sixty days following the date of such sale or transfer, an amount equal to the product of Buyer's Share and the Net Gain. If upon the termination of this Agreement, the conditions set forth in clauses (a), (b) and (c) of the preceding sentence are satisfied and Seller realizes a Net Loss (as hereinafter defined) from the sale or transfer of ownership of the Site to another person or entity, Buyer shall pay to Seller, within sixty days following the date of such sale, an amount equal to the product of Buyer's Share and the Net Loss.

For purposes of this Section 7.12, Net Gain shall mean the amount by which the price received by Seller upon the sale or transfer of ownership of the Site exceeds the original cost of the Site plus the expenses associated with the sale or transfer and any taxes, fees or other amounts due to be paid on account of such sale or transfer; and Net Loss shall mean the amount by which the original cost of the Site plus expenses associated with such sale or transfer and any fees or similar amounts (excluding amounts spent for Site restoration) due to be paid on account of such sale or transfer exceed the price (if any) received by Seller upon the sale or transfer of ownership of the Site.

V. Appendix B is deleted in its entirety and the following is substituted therefore:

1. Definitions

The terms in this Appendix B shall have the same meaning as in the Unit Power Agreement for the Sale of Capacity and Energy from Ocean State Power Project to Boston Edison Company, dated December 31, 1985, as subsequently amended (the "Agreement").

2. Site Restoration Plan

It is the intent of the Parties that upon the commercial date of each unit, the purchasers of the capacity and corresponding energy of each unit shall be responsible for the cost of Site restoration attributable to each unit to the extent set forth in this Appendix B; provided, however, that after the achievement of the commercial date by both units, the cost of Site restoration attributable to facilities that benefit both units,

the Common Facilities, shall be allocated equally to the purchasers of the two units. For the purpose of this Appendix B, Site restoration shall mean the return of the Site to as close as is practicable to its condition prior to the construction of either unit, including, without limitation, removing all buildings, improvements and other structures, both above and below the ground, placed thereon by Seller and including doing all acts and things necessary to comply with all federal, state and local environmental laws, ordinances and requirements and to obtain all permits, certificates or other applicable evidence that the Site is free from pollution or contamination by toxic or hazardous wastes.

3. Site Restoration Fund

To provide payment for the restoration of the Site, Seller shall create and maintain a restoration fund (the "Fund") to be used for the purpose of restoring the Site in accordance with Section 2 above. The Fund shall be segregated into two interest bearing accounts: a Unit 1 Account and a Unit 2 Account. Seller shall use its best efforts to obtain no-tax status for the Fund. Until the commercial date of Unit 2, the cost of Site restoration shall be borne entirely by the Purchasers of the Capacity and Corresponding Energy of Unit 1 ("Unit 1 Purchasers") and Seller shall place that portion of the Monthly Capacity Charge paid by the Unit 1 Purchasers relating to Site restoration into the Unit 1 Account of the Fund; provided, however, that if Unit 2 never achieves its commercial date, then the Unit 1 Purchasers shall not be liable for the cost of any Site restoration attributable to Unit 2. Upon the commercial date of Unit 2, the cost of Site restoration attributable to Unit 2 and fifty (50) percent of the cost of Site restoration attributable to the Common Facilities shall be borne by the purchasers of the capacity and corresponding energy of Unit 2 ("Unit 2 Purchasers") and Seller shall place that portion of the monthly capacity charge paid by those purchasers relating to Site restoration into the Unit 2 Account. (If for any reason Unit 2 achieves commercial date before Unit 1, Seller and the purchasers shall revise this Appendix B to provide for the cost of Site restoration consistent with the objective that the purchasers of each unit shall be responsible for costs attributable to their units, including an appropriate share of Common Facilities.)

That portion of the Monthly Capacity Charge attributable to Site restoration shall be determined by Seller from time to time in accordance with a certified estimate from a mutually agreeable expert in environmental clean-up matters (the "Environmental Expert") who shall be selected from time to time. The Environmental Expert shall determine and certify sixty (60) days prior to the Commercial Date of Unit 1 its initial estimate of the costs of Site restoration (the "Initial Estimate"). On or about the commercial date of Unit 2, the Environmental Expert shall adjust its Initial Estimate and certify the cost of Site restoration required for each unit and for the Common Facilities. Every six years after the Initial Estimate, the Environmental Expert shall recalculate and certify its estimate of the cost of Site restoration for each unit and the Common Facilities. (The Initial Estimate and any subsequent estimate of the cost of Site restoration shall be expressed in the dollars of the year following the depreciation period set forth in Article 7.3(b)(1) of the Agreement as extended pursuant to Article 5.6 of the Agreement.) Thereupon, the monthly amount payable into the Fund by the Unit 1 Purchasers and the Unit 2 Purchasers shall be adjusted, up or down, such that the sum of (1) amounts previously due (whether or not actually paid), plus (2) future amounts to be paid during the period used for the calculation of depreciation charges set forth in Article 7.3(b)(i) of the Agreement or Article 5.6 during any extension of the Agreement, plus (3) interest accrued during such period equals the estimated cost so certified. At such time as the value of any account of the Fund is sufficient to pay the total restoration costs specified for that account in the then current certification (the "Certified Costs"), all interest and other amounts in the Fund in excess of the Certified Costs shall be paid over to the appropriate purchaser of either Unit 1, Unit 2 or both, and further monthly contributions shall not be required for that account (unless and until a new certification is delivered which shows updated "Certified Costs" in excess of the current value of any account of the Fund, in which event monthly payments shall be computed as above set forth, shall commence to be made and shall continue until the value of any account of the Fund is again at least equal to the Certified Costs). Buyer shall have no liability for restoration costs pursuant to this Appendix B if the actual costs of restoration related to Unit 1 and an appropriate share of the

Common Facilities exceed the amounts in the Unit 1 Account, including amounts due and owing (whether or not actually paid), upon the termination of the Agreement; nor shall Seller have any obligation to make refunds or otherwise credit Buyer's account if the amounts in the Unit 1 Account, including amounts due and owing, exceed the actual restoration costs upon the termination of the Agreement. The immediately preceding sentence shall not affect the rights and obligations of the Parties pursuant to Articles 5.6 and 7.12 of the Agreement.

Upon written request by Buyer or any other Purchaser, Seller shall file the Initial Estimate or the subsequent Certified Costs with the FERC for a determination that such Initial Estimate or such subsequent Certified Costs is just and reasonable; provided, however, that only one such filing shall be required in connection with each such Initial Estimate or such subsequent Certified Costs. Any adjustment of the Initial Estimate or Certified Costs by FERC shall be prospective in effect only. Any filing made pursuant to this provision shall not be considered a unilateral filing for the purposes of Article 10.12 of the Agreement.

4. Trustee of Site Restoration Fund

The Fund shall be held by and under the control of a bank or other institutional trustee selected by Seller. The designated trustee (the "Trustee") shall administer the investment and use of the Fund, which shall include all interest and other proceeds thereof. Prior to the Commercial Date of Unit 1, Seller and the Unit 1 Purchasers shall enter into an agreement with the Trustee (the "Trust Agreement") setting forth the Trustee's rights and responsibilities, the fee to be paid the Trustee, the uses to which the Fund may be put and such other matters which are customary, necessary or appropriate to include in the Trust Agreement. Prior to the commercial date of Unit 2, Seller and the Unit 2 Purchasers shall execute a similar Trust Agreement. It is understood and agreed that the Fund shall be used only for (i) payment or reimbursement of costs and expenses incurred in connection with the restoration of the Site as contemplated in Subsections 2 and 3 above; (ii) payment of costs, expenses or fees relating to the maintenance, investment or administration of